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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,167	07/30/2003	Gideon Eden	Neogen 4.1-51	7641
7590 04/16/2007 Ian C. McLeod IAN C. McLEOD, P.C. 2190 Commons Parkway Okemos, MI 48864			EXAMINER BEISNER, WILLIAM H	
			ART UNIT	PAPER NUMBER
			1744	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/630,167

Applicant(s)

EDEN, GIDEON

Examiner

William H. Beisner

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1 and 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curby (US 3,522,734) in view of Pautz (DE 198 17 715).

The reference of Curby discloses a device that is structurally capable of collecting and detecting airborne microorganisms that includes a enclosed container (10) with liquid media (27); the container includes a first tube (15) with an outwardly extended end opened to the ambient air and extending to a bottom section of the container so as to be in the liquid media (See Figure 1) and a second tube (16) adjacent the first tube extending into the headspace in the container (See Figure 1) above the liquid media at one end and having an other end; a vacuum

Art Unit: 1744

pump (See column 3, lines 30-39) for transferring an air sample through the liquid media from the first tube (15).

Claim 1 differs by reciting that the device includes a submicron filter on the other end of the second tube between the container and vacuum pump.

The reference of Curby discloses that it is known to employ the disclosed device to sample biological material in the air (See column 4, lines 31-35).

The reference of Pautz discloses that when sampling air for microorganisms and using a vacuum pump, it is known in the art to provide the device with a submicron filter to prevent the microorganisms from exiting the device (See page 8, first paragraph, of the English language translation).

In view of these teachings, when sampling air containing microorganisms, it would have been obvious to one of ordinary skill in the art to provide the device of the primary reference with a submicron filter positioned between tube (16) and the vacuum pump for the known and expected result of preventing biological materials from leaving the container and contaminating the ambient surroundings and/or pump.

With respect to the claim limitation “wherein the container, first tube, second tube and filter are disposable after the collection and detecting of the airborne microorganisms”, in the absence of further positively recited structure, the container (10), first tube (16), second tube (16) and filter of the modified primary reference are capable of being disposed of after use of the device.

With respect to the positively recited “liquid media capable of growing the microorganisms” of claim 1 and claims 4-10, statements of intended use carry no patentable

Art Unit: 1744

weight in apparatus-type claims. The claimed media is considered merely material worked on during use of the device. Note “Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969) (See M.P.E.P. 2115).

Furthermore, while the reference of Curby discloses the capture and detection of microorganisms (See column 4, lines 23-35), the reference is silent as to the use of a culture liquid as the entrapment liquid.

The reference of Pautz discloses that it is known in the art to provide a capture device for microorganisms with a culture medium so that microorganisms can be detected without being removed from the capture device (See page 5, 2nd full paragraph; page 7, 1st paragraph; and page 8, 2nd paragraph, of the English language translation).

In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ an entrapment liquid in the device of the reference of Curby that is also an enrichment medium for the collected sample as suggested by the reference of Pautz. Use of a culture medium as the entrapment liquid would avoid the delay associated with a subsequent transfer of the sample for further culturing and analysis as done in the reference of Curby.

With respect to claims 4-9, the reference of Pautz discloses the use of culture medium that allows for the detection of microorganism presence within the sampling container (See page 7, 1st and 2nd full paragraphs, of the English language translation). The specifics of the culture medium and detecting agents employed would have obvious to one of ordinary skill in the art at

Art Unit: 1744

the time the invention was made based merely on the specifics of the microorganism to be detected.

With respect to claim 10, anthrax is a notoriously well-known airborne microorganism and thus would have been well within the purview of one of ordinary skill to detect this microorganism using known culture medium and detection reagents capable of indicating the presence of anthrax in the sampled air.

4. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curby (US 3,522,734) in view of Pautz (DE 198 17 715) taken further in view of Hakalehto (WO 9923243).

The combination of the references of Curby and Pautz has been discussed above.

With respect to claims 4-9, while the reference of Pautz discloses the use of an enrichment medium and detection of microorganisms, the reference is not clear whether the detection steps include a substance that detects microbial growth.

The reference of Hakalehto discloses the use of culture medium that allows for optical detection of microorganism presence within the sampling container (See page 6, lines 16-22). The specifics of the culture medium and detecting agents employed would have obvious to one of ordinary skill in the art at the time the invention was made based merely on the specifics of the microorganism to be detected.

With respect to claim 10, anthrax is a notoriously well-known airborne microorganism and thus would have been well within the purview of one of ordinary skill to detect this microorganism using known culture medium and detection reagents capable of indicating the presence of anthrax in the sampled air.

Response to Arguments

5. With respect to the rejection of Claims 1, 2 and 11 under 35 U.S.C. 102(b) as being anticipated by Pautz (DE 19817715), this rejection has been withdrawn in view of the amendments to claim 1 and related comments (See page 6 of the response filed 1/22/07). Note a new ground of rejection has been made over the combination of Curby (US 3,522,734) in view of Pautz (DE 198 17 715).

6. With respect to the rejection of Claims 1-11 under 35 U.S.C. 103(a) as being unpatentable over Bradley (US 6,550,347) in view of Pautz (DE 19817715), this rejection has been withdrawn in view of the amendments to claim 1 and related comments (See page 6 of the response filed 1/22/07). Note a new ground of rejection has been made over the combination of Curby (US 3,522,734) in view of Pautz (DE 198 17 715).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 1744

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



William H. Beisner
Primary Examiner
Art Unit 1744

WHB